

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>TRANSACTION NETWORK SERVICES,</p> <p>v.</p> <p>Respondent:</p> <p>PROPERTY TAX ADMINISTRATOR.</p>	<p>Docket No.: 60797</p>
<p>ORDER DISMISSING APPEAL</p>	

THIS MATTER came before the Board of Assessment Appeals on April 11, 2013 on Respondent’s Motion to Dismiss Petition of Transaction Network Services, Inc. (Lack of Jurisdiction – Failure to Exhaust Administrative Remedies) (“Motion to Dismiss”). James R. Meurer and Brooke B. Leer presided.

1. Procedural Background

Respondent’s Motion to Dismiss was filed with the Board on January 17, 2013. Pursuant to the BAA Rule 28, Petitioner’s response to Respondent’s Motion to Dismiss was due by no later than January 24, 2013. On March 20, 2013, the Board received an e-mail from Petitioner expressing Petitioner’s intent to submit a response to Respondent’s Motion to Dismiss. As of the date of this Order, the Board has not received Petitioner’s response.

2. Respondent’s Arguments

In its Motion to Dismiss, Respondent, Property Tax Administrator (“PTA”), argues that the Board lacks jurisdiction to hear this appeal because Petitioner has not preserved its rights to appeal as required by law under Sections 39-4-108 and 39-2-125, C.R.S.

According to Respondent, a notice of proposed valuation was provided to Petitioner as required by Section 39-4-107, C.R.S. on or before July 1, 2012. After receiving the said notice, Petitioner had until July 15, 2012 to file a protest with the PTA disputing the PTA’s determination of the subject’s value. *See* Section 39-4-108(1), C.R.S. Respondent contends that Petitioner has never protested the PTA’s notice of valuation. Because Petitioner failed to protest the PTA’s notice of valuation, the PTA has not issued a decision on Petitioner’s notice of valuation. Respondent argues that because the BAA’s jurisdiction is limited to hearing appeals

from decisions issued by the PTA, the BAA does not have jurisdiction to hear Petitioner's appeal. *See e.g.*, Section 39-2-125, C.R.S. (the BAA has jurisdiction to "[h]ear appeals from *orders* and *decisions* of the property tax administrator . . .") (Emphasis added).

Further, Respondent contends that by not appealing the PTA's notice of proposed valuation, Petitioner failed to exhaust administrative remedies required in order to confer jurisdiction on the Board of Assessment Appeals. Accordingly, because Petitioner has not complied with the appeal process set out by Sections 39-4-108 and 39-2-125, C.R.S and has not exhausted its administrative remedies, this appeal should be dismissed for lack of subject matter jurisdiction.

3. Findings

After consideration of Respondent's arguments, the Board finds that this appeal is subject to dismissal on the jurisdictional grounds pursuant to Sections 39-4-108 and 39-2-125, C.R.S. The Board finds that Petitioner did not timely protest the PTA's notice of proposed valuation, failing to exhaust its administrative remedies prior to pursuing an appeal before the BAA. Because Petitioner have not exhausted its remedies and failed to comply with the statutes, the Board is without jurisdiction to hear this case.

Although Petitioner is precluded from pursuing its appeal at the BAA, under the facts of this case, Petitioner may nevertheless seek an appeal under the abatement and refund process.

ORDER:

Petitioner's appeal is hereby dismissed.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

Dated this 15th day of April, 2013.

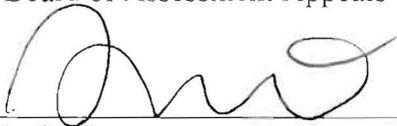
BOARD OF ASSESSMENT APPEALS

James R. Meurer



Brooke B. Leer

I hereby certify that this is true and correct copy of the decision of the Board of Assessment Appeals



Milla Crichton

